

TO: San Diego Audit Committee

CC: Files

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Theresa McAteer on June 16, 2006

DATED: July 25, 2006

On June 16, 2006, Michael Schachter, in Willkie Farr & Gallagher LLP's capacity as counsel to the Audit Committee, interviewed Theresa McAteer. Ms. McAteer was not represented during this interview. The interview took place by telephone, and lasted one and one-half hours. Ray Sarola from Willkie was the only other participant on the call.

The following memorandum reflects my thoughts, impressions, and opinions regarding our conversation with Ms. McAteer, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Background

Ms. McAteer began practicing law in 1983, and worked in banking and business litigation until 1994. In 1994, she took the position of Intergovernmental Relations Director with the City of San Diego. The following year, she moved to the City Attorney's Office (CAO), after being recruited by City Attorney John Witt and Assistant City Attorney Curtis Fitzpatrick. She spent five months in the Criminal Division of the CAO, and in November 1995, moved to the Civil Division where she worked on "Special Projects," specifically the Convention Center. From November 1995 until February 1997, Ms. McAteer worked primarily in public finance and performed other research for Special Projects. Her work with the Convention Center included its bond offerings, and its agreement with the Port Authority. She stated that she was not initially assigned to the Qualcomm Stadium, since that was Kelly Salt's project, but filled in for Ms. Salt when she was needed. Mr. Schachter asked her what kinds of work she did in public finance and Special Projects, and Ms. McAteer replied that for the Convention Center there were two or three years of TANs (Tax Anticipation Notes), but beyond that she worked mainly in a "supervisory role." Ms. McAteer stated that public finance never became the "big thing I did"; she only worked in this area regarding the Convention Center.

Ms. McAteer explained that after Casey Gwinn was elected City Attorney in November 1996, Lorraine Chapin insisted that under Proposition 162, CERS was entitled to its own independent counsel. City Attorney Gwinn then allowed CERS to hire Ms. Chapin for this position. Retirement Administrator Lawrence Grissom asked Ms. McAteer to supervise the attorneys in the CAO who worked on labor relations, which included police, fire, and worker's compensation work. Ms. McAteer said that in 1997 she worked with Ms. Chapin on some CERS matters, but this was mostly in a supervisory role, and only involved some substantive work.

Ms. McAteer performed this work until 2001, when she began to work on the Ballpark project, specifically the *Environmental Impact Report*. Ms. McAteer gave nine weeks notice in September 2001, and in November 2001, she left the CAO to go into practice with her husband.

Bond Offering Procedure

Mr. Schachter noted that Ms. McAteer signed the bond offerings for the Balboa Park refunding. Ms. McAteer said that she worked on the COPs (Certificates of Participation) for Balboa Park. These were fundamentally the same as Lease Revenue bonds, which involved a "lease and lease-back" financial mechanism. This structure involved a third party to provide the lease revenue to support the issuance of bonds. She said that the City used Lease Revenue bonds for the Convention Center in 1998, during which time Bruce Henderson sued the City to block this financing. Mr. Schachter asked Ms. McAteer why she was the one who signed the offerings. She responded that Kelly Salt used to handle the majority of the public finance matters in the CAO, and was the "public finance person" for the Convention Center. The Convention Center project eventually got very large, and eventually the public finance work on that project became Ms. McAteer's responsibility. Ms. McAteer said that regarding the Ballpark financing, she only handled the environmental report and negotiations with the Padres, not the public finance aspects. She said that generally the CAO attorneys had certain departments for which they were responsible, like "clients within the City."

Ms. McAteer stated that it was Kelly Salt who first trained her on public finance work. Ms. McAteer worked alongside Ms. Salt in 1995 and 1996, including on the Balboa Park financing. Mr. Schachter asked about the TANs in 1997 and 1998, and Ms. McAteer replied that she might have signed those offerings because Ms. Salt was on maternity leave. In 1998, the CAO tried to find more attorneys to take on public finance work, and eventually hired an attorney who worked with Ms. Salt following the 1998 TANs.

Mr. Schachter asked Ms. McAteer to explain the process by which a public finance project is approached. She replied that a Request For Proposals (RFP) for bond counsel was the first step. She noted that Orrick was usually the City's bond counsel, but she didn't know how they came to be selected. There were many all-hands meetings involving Ms. McAteer, Mr. Fitzpatrick, Deputy City Manager Pat Frazier, Deputy City Manager Bruce Herring, City Treasurer Mary Vattimo, Elaine Duvall, City Auditor and Comptroller Ed Ryan or Assistant City Auditor Terri Webster, someone from Financing Services, project managers, and representatives from auditors and Orrick. These meetings were held to discuss capital needs and other aspects of the project relevant to the financing documents. At some point, Paul Webber (Orrick) would produce draft financing documents, and the CAO liaised with the various City departments to revise the draft documents. She said that Ed Ryan was asked if the CAFR was accurate and the CAO responsible for litigations was asked if outstanding claims were disclosed. Mr. Webber had asked her whether the description of the *Corbett* suit was accurate. She noted that she is not an accountant or auditor, so she was unable to say whether the CAFR was accurate.

Ms. McAteer said that the City hated the *Corbett* settlement, but the law would likely have caused the City to lose the suit. After the suit was settled, the City's liability was capped and could then be reported. Ms. McAteer said that the City needed outside counsel during this suit, and she sat in settlement meetings and liaised with the City's outside counsel.

Mr. Schachter asked Ms. McAteer to describe her actions to verify the accuracy of the information contained in the bond offering documents. Ms. McAteer said that the Deputy City Attorney is one of several people looking at the POS. She said that the reality was she expected the bond counsel to tell the City if something was misstated. Mr. Schachter asked how she ensured the CAFR was accurate, and she replied that it is a very long document and the CAO did not go page-by-page. She said that Mr. Ryan had an independent obligation to construct the CAFR accurately, and suggested that not even Mr. Webber would have gone through the entire CAFR. Ms. McAteer said that it is the role of the CAO to sign the offering documents, but no one at the CAO read the entire document.

Mr. Schachter stated that the offering statements certified that the information provided was "accurate in all respects," and again asked Ms. McAteer what she did to confirm the accuracy of the information in the offering statements. Ms. McAteer replied that the CAFR was already signed by other officials. She said she looked at parts of the CAFR, but did not recall specifics, and did not read every page. She relied, in part, on Mr. Ryan's certification as Auditor. Mr. Schachter asked if she did anything to verify the information contained in the CAFR, and Ms. McAteer replied that she asked Mr. Ryan if anything looked odd, though things rarely did. She said she would not have hired another auditor to check his work. Mr. Schachter asked if she requested that Mr. Ryan confirm the accuracy of the CAFR to her, and she said that this would be part of the process but she would not have "grilled" him. Ms. McAteer said that she would have asked "do we have the updated CAFR," but did not have a specific recollection of asking him. She said that she would have spoken to Mr. Ryan, Ms. Webster, and Mr. Phillips at the Auditor and Comptroller's Office.

Mr. Schachter asked if Ms. McAteer believed it was not her job to read the CAFR, and she said that was correct. She stated that Appendix B to the offering statements was also verified by the City's auditors, Calderon, Jahan & Osborn. She said she would look to see if certain things that she had knowledge of were described accurately, such as the descriptions of other bond issuances. Mr. Schachter asked if she reviewed Appendix A, and she replied that she would have read this, but was not able to verify all the numbers it contained. She mostly looked at the description of the given project in the POS and OS, and also looked at the Proposition 218 and litigation disclosures.

Mr. Schachter asked her how she ensured the accuracy of the sections she read. Ms. McAteer responded that she relied on the staff members who prepared the sections. She stated that she had a reasonable, good faith belief that staff was not lying. Mr. Schachter asked Ms. McAteer if she spoke with any individuals to verify her belief, and told her she could take her time and review her documents to refresh her memory. After a few minutes, Ms. McAteer responded that she based her practice in this regard on what she had learned of the City structure from Mr. Fitzpatrick and Ms. Salt. Ms. McAteer said that regarding Appendix A, either Bruce Herring, Pat Frazier, or Ed Ryan would have directed their staff to verify the information. She noted that the numbers in the CAFR came from various City offices. Ms. McAteer said that she would not have verified certain budgeting numbers or statements of intent by the Council. For example, she said she would not have verified a statement that the City budgeted a certain amount for a ticket guarantee, and also noted that some statements were qualitative and not capable of being verified. She said that her job was to confirm that people who made various

representations were the people who should have made such representations and that they were reliable.

Mr. Schachter asked Ms. McAteer to describe the steps that she took to accomplish her goal of confirming the representations of others. She replied that Mr. Ryan is the City Auditor, and it was his job to verify the numbers. If others had questions about the reliability of these numbers, this would have come up in meetings. She said that certain information didn't change much between offerings, but issues like Proposition 218 were less settled, so she would have looked at these sections more carefully and might even have drafted them. Regarding the pension system, the bond documents contained general statements, and financial information from valuations. Ms. McAteer said that she knew the valuations contained certain numbers, but didn't write them herself.

Mr. Schachter noted that the bond offerings contained language regarding the requirements of state legislation for pension funding and asked if Ms. McAteer knew about MP-1 at the time she signed the offering documents. She replied that "it was not on my radar." She explained that this was not a focus of the City's around 1998, and that she would only have learned about certain aspects of MP-1 through research on other topics, such as *Corbett*. Mr. Schachter said that this language in the bond documents was literally correct, but was misleading because the City was not complying with the state requirements. Ms. McAteer replied that no one brought up this issue. Mr. Schachter asked if she did anything in her capacity at the CAO to verify that statement, and she said that she did not know who wrote that statement and it would have been enough for her that no one challenged it throughout the process. Mr. Schachter asked how Mr. Webber, for instance, would have known enough to verify the statement, and Ms. McAteer said that "he made it his business to know."

Mr. Schachter observed that other officials sign the bond statements in addition to the CAO. He asked Ms. McAteer what the purpose of the CAO certification was, because it did not appear to add anything to the other certifications. Ms. McAteer said that people were looking to the CAO to say whether the financing had a legal structure. She offered that MP-1 was "not created in a vacuum," and that the agreement was discussed in public hearings and signed off on by attorneys. She said that at the time she signed the bond documents, MP-1 was established law, passed through public hearings, and it was not on anyone's radar that it was not right.

Mr. Schachter asked Ms. McAteer if there was a difference between what the CAO did to verify information in the bond documents, and what it certified it was doing. Ms. McAteer said that she could "appreciate that interpretation," and stated that the CAO looked at the legality of the transaction and confirmed that information came from reliable sources. She said this was a long-standing practice and was "under the eye" of bond counsel. Mr. Schachter observed that Orrick had disclaimed responsibility for certain information in its opinion letter, and said that the CAO certified that all the information in the bond documents was accurate. Ms. McAteer replied that "someone needs to say it's accurate," and that was the CAO's role. She said that "in the real world, we made sure the process was followed," and that the right people were signing the documents.

Mr. Schachter asked Ms. McAteer if it was her practice to circulate the POS around the City Attorney's Office. She replied that it would have been circulated to everyone

who had direct information on a given statement in the disclosures. For instance, it would have gone to the head of litigation, who would then distribute among staff. She said that, as a practical matter, the CAO looked at those issues that “jumped out” at them. Ms. McAteer said that Deputy City Attorney Rick Duvernay might have been the most knowledgeable person in the CAO regarding pension matters, but was not sure.

Corbett

Mr. Schachter asked Ms. McAteer to describe her knowledge of the City’s disclosure of the *Corbett* lawsuit. Ms. McAteer said that the City issued bonds while *Corbett* was pending and made disclosure in the OS. Mr. Schachter asked why this information was not disclosed in the City’s CAFR, and Ms. McAteer replied that she didn’t know if that disclosure was legally required, and that there was no “category” for *Corbett* in the CAFR. She said that there may have been *Corbett*-related numbers in a “public liability” risk category in the CAFR, but the suit was not mentioned by name.

Mr. Schachter asked about the “contingent” nature of certain aspects of the *Corbett* settlement, and Ms. McAteer said that there were agreements to make certain payments “contingent,” along the lines of the 13th check. She stated that *Corbett* payments were different from the 13th check because they accrued. She said that the liability was not contingent, just the timing of the payments. Regarding disclosure, Ms. McAteer said that after the suit was settled, one would expect that the numbers would be integrated into the CAFR. She recalled that during the pendency of the suit, Paul Webber or Mary Vattimo had brought her the OS to verify the accuracy of the *Corbett* description. Mr. Schachter said that the *Corbett* payments were not really “contingent” because they accrued, but the City didn’t include those payments when calculating its NPO. Ms. McAteer said that was an “interesting” view, but she could not opine on it.

Mr. Schachter noted that the City’s 2000 Annual Report stated that *Corbett* payments were “paid from sources other than the City’s general fund.” He said that this statement was technically accurate, but it suggested that the payments would not have a financial impact on the City. Ms. McAteer said that she would not have been asked about this comment, only whether the lawsuit was accurately described. Mr. Schachter said that the comment appeared to be an attempt to hide the impact of *Corbett* on the City, and asked why the comment would be included in the first place. Ms. McAteer said that she didn’t know, and this was a long time ago. She mentioned that other people won’t talk publicly because they’re afraid, or “fed up” with conspiracy allegations. This created an atmosphere in the City where people won’t talk for one reason or another. She noted that Mr. Ryan, Ms. Webster, and Ms. Frazier would otherwise want to tell their sides of the story.

Mr. Schachter asked Ms. McAteer if she recalled the actuary's opinion on the "contingent" *Corbett* benefits. She said that she did not recall any such discussions and did not have any interaction with the actuary. She then said that the CAO would have asked CERS or its outside actuary about this issue and about whether the funded ratio was above the *Corbett* floor of 90%. Mr. Schachter asked if she knew that the actuary opposed treating *Corbett* payments as "contingent," and she replied that she did not know this, and at that time this was handled by CERS and its counsel. Ms. McAteer said that this issue was not a focal point of the CAO.

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